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BUTZEL LONG			EXAMINER	
IP DOCKETING DEPT			ADAMS, GREGORY W	
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BOUDRIE@BUTZEL.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte MICHAEL LAMBRIGHT*

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Appeal 2009-005963  
Application 10/612,254  
Technology Center 3600

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Before STEVEN D.A. McCARTHY, MICHAEL W. O'NEILL  
and FRED A. SILVERBERG, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1       The Appellant appeals under 35 U.S.C. § 134 from the Examiner's  
2 decision rejecting claims 1, 3-9 and 11-22 under 35 U.S.C. § 102(b) as being  
3 anticipated by Chandler (US 3,760,965, issued Sept. 25, 1973). We have  
4 jurisdiction under 35 U.S.C. § 6(b).

5       We REVERSE.

6       Claim 1 recites:

7           1. A spare tire carrier for vehicles which  
8           comprises:

9               a support arm for mounting a spare tire  
10          thereon, said support arm having a fixed end, a  
11          free end and a central axis; and

12              a cooperating tubular assembly coupled to  
13          the fixed end of the support arm for mounting the  
14          support arm on a vehicle,

15               said cooperating tubular assembly including  
16          upper and lower tubular members and upper and  
17          lower opposed planar guide plates wherein the  
18          upper guide plate is attached to the upper tubular  
19          member and the lower guide plate is attached to  
20          the lower tubular member and the upper and lower  
21          opposed planar guide plates are coupled together  
22          so as to allow for relative rotational movement of  
23          said upper and lower opposed guide plates about a  
24          common axis which extends through the upper and  
25          lower guide plates, whereby relative rotational  
26          movement of the upper and lower guide plates  
27          about said common axis simultaneously causes the  
28          support arm to rotate about its central axis while  
29          pivotting the central axis of the support arm with  
30          respect to the cooperative tubular assembly, said  
31          upper and lower tubular members having a  
32          common central axis of pivot.

1 Claim 9, the only other independent claim on appeal, recites a vehicle  
2 including a spare tire carrier comprising elements similar to those recited in  
3 claim 1.

4 Chandler describes a carrier for carrying a motorcycle on a motor  
5 vehicle. (Chandler, col. 1, ll. 15-18). Chandler's carrier 22 includes a  
6 channel or rail 23 pivotally coupled to a support arm 27 coupled to the motor  
7 vehicle. (Chandler, col. 2, ll. 47-51 and 62-66). Figure 7 of Chandler  
8 depicts a cheek plate 53 welded to the bottom side 27B of the support arm 27  
9 at a fixed end 27F of the support arm 27. (Chandler, col. 4, ll. 2-6). Figure  
10 7 of Chandler also depicts a plate 59 supported by plates 61, 63. (Chandler,  
11 col. 4, ll. 12-14). Figure 7 shows the plates 61, 63 as being welded to the  
12 channel 23 to form a hollow structure triangular in cross section. (*See id.*)  
13 A pivot rod 65 causes the plates 53, 59 to engage along parallel surfaces to  
14 couple the channel 23 to the support arm 27 for pivotal movement along an  
15 inclined axis 55. (Chandler, col. 4, ll. 27-33).

16 The Examiner finds that Chandler discloses a support arm 23; an  
17 upper planar guide plate 53 attached to an upper tubular member 27F; a  
18 lower planar guide plate 59 attached to a lower tubular member including  
19 the plates 61, 63 and the lower portion of the channel 23. (Ans. 3).

20 The Appellant argues that the fixed end 27F of Chandler's support  
21 arm 27 and the member including the plates 61, 63 in combination with the  
22 lower portion of the channel 23 do not have "a common central axis of  
23 pivot" as claims 1 and 9 require of the upper and lower tubular members.  
24 (App. Br. 14-15).

25 The Examiner responds that "Chandler's axis 65 is common to both  
26 upper and lower tubular assemblies because it extends through plates 53, 59

1 which allows relative motion of lower tubular [assembly] about upper  
2 tubular [assembly].” (Ans. 8). Furthermore, in the Advisory Action  
3 entering the amendment inserting the language “said upper and lower  
4 tubular members having a common central axis of pivot” into claim 1 for  
5 purposes of this appeal, the Examiner concluded that “‘common’ and  
6 ‘central’ are relative terms such that without a frame of reference any pivot  
7 axis can be a central axis and as long as the axis runs through the apparatus  
8 it is common to the tubes which comprise the apparatus.” (Advisory Action  
9 mailed May 20, 2007 at 2).

10 The Examiner’s interpretation of the term “said upper and lower  
11 tubular members having a common central axis of pivot” as used in claims 1  
12 and 9 is unreasonably broad. In the Advisory Action mailed May 20, 2007  
13 at 2, the Examiner concludes that “any pivot axis can be a central axis,”  
14 thereby reading the word “central” out of the term “central axis of pivot.”  
15 Likewise, the Examiner’s conclusion that any axis which “runs through the  
16 apparatus” is “common” to the tubular members effectively reads the word  
17 “common” out of the claims.

18 While the meaning of the term “common central axis of pivot” is not  
19 immediately clear when read in view of the Specification, the words  
20 “common” and “central” cannot be given any meaningful effect in the term  
21 “said upper and lower tubular member having a common central axis of  
22 pivot” without excluding Chandler’s axis 55 (that is, the axis of Chandler’s  
23 pivot rod 65). The Examiner has not provided a persuasive explanation as to  
24 how Chandler’s axis 55 is “central” to both the fixed end 27F of Chandler’s  
25 support arm 27 and the member including the plates 61, 63 in combination  
26 with the lower portion of the channel 23 in any sense which does not render

1 the word “central” meaningless. We do not sustain the rejections of  
2 independent claims 1 and 9, or of the claims depending from claims 1 and 9,  
3 under § 102(b) as being anticipated by Chandler.

4

5 DECISION

6 We REVERSE the Examiner’s decision rejecting claims 1, 3-9 and  
7 11-22.

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9 REVERSED

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